

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

In Re:)
)
AREDIA® AND ZOMETA® PRODUCTS)
LIABILITY LITIGATION)
)
(MDL No. 1760)) **No. 3:06-MD-1760**
) **Judge Campbell/Brown**
)
This Document Relates to:)
)
3:10-cv-00437 (*Schnelle*))

ORDER

Plaintiff Betty Schnelle died on December 21, 2012. (MDL Doc. 7003; Related Case 11)

A suggestion of death was filed September 19, 2013. (MDL Doc. 7003; Related Case 11)

Counsel for the late Ms. Schnelle filed a motion on November 6, 2013 to substitute the late Ms. Schnelle's daughter, Donna Russo, as "plaintiff *ad litem*" in this action "until such time as she is appointed as personal representative" of her late mother's estate by Missouri probate court. (MDL Doc. 7109, ¶ 6, p. 2; Related Case 12) Ms. Russo is one of the late Ms. Schnelle's three children, the others being her sons, Randy and David Schutte.¹ (MDL Doc. 7109, ¶ 9, p. 2; Related Case 12) Randy and David Schutte both have "consent[ed] to the appointment of Donna Russo as plaintiff *ad litem* for [their] mother, Betty Schnelle." (MDL Doc. 7109, Ex. B-C; Related Case 12)

Defendant Novartis Pharmaceuticals Corporation (NPC) filed a response in opposition to the motion on November 19, 2013. (MDL Doc. 7151; Related Case 13) NPC argues that Ms. Russo cannot pursue the late Ms. Schnelle's claims in this case under Missouri law as "plaintiff *ad litem*," nor has she been appointed as personal representative of her late mother's estate by the Missouri probate courts. (MDL Doc. 7151, ¶¶ I.A-B, pp. 2-6; Related Case 13)

¹ The late Ms. Schnelle also had two step-children, Edward Schnelle and Marianne Rieger. (MDL Doc. 14, Ex. A, p. 3; Related Case 14)

Counsel filed a reply to NPC's objection on December 3, 2013. (MDL Doc. 7177; Related Case 14) In the reply, counsel avers that Ms. Russo has filed a petition for letters testamentary, as well as a motion to expedite a ruling on her petition, both of which were filed in the Probate Division of the Circuit Court for St. Louis County, Missouri. (MDL Doc. 7177, p. 2; Related Case 14) A copy of the petition, filed November 25, 2013, and the motion to expedite, filed November 26, 2013, are attached as exhibits to the reply. (MDL Doc. 7177, Ex. A-B; Related Case 14)

The motion to substitute (MDL Doc. 7109; Related Case 12) is **DENIED IN PART AND GRANTED IN PART**. To the extent that Ms. Russo seeks to be substituted as "plaintiff *ad litem*" in this case, her motion is DENIED for the reasons argued in NPC's response. To the extent that Ms. Russo's reply was intended to amend/supplement her original motion to move in the alternative for provisional substitution, her motion for provisional substitution is GRANTED.

Plaintiff shall comply with ¶ V.C.2.b of the Case Management Order (CMO) which governs provisional substitution. Plaintiff is forewarned that failure to comply with the CMO may result in sanctions and/or a recommendation that this case be dismissed for failure to comply with the orders of the court.

It is so **ORDERED**.

ENTERED this 5th day of December, 2013.

/s/Joe B. Brown
Joe B. Brown
United States Magistrate Judge